

Division 3: Premier and Cabinet — Service 2, Aboriginal Affairs, \$38 621 000 —

Ms J.M. Freeman, Chair.

Mr B.S. Wyatt, Minister for Aboriginal Affairs.

Ms M. Andrews, Deputy Director General, Policy and Reform.

Mr G. Meyers, Director, Corporate Services.

Ms A. Elder, Manager, South West Settlement Implementation.

[Witnesses introduced.]

The CHAIR: I would like to start by acknowledging the traditional owners of the land on which we meet—the Whadjuk people of the Noongar nation, and their elders past and present.

This estimates committee will be reported by *Hansard*. The daily proof *Hansard* will be available the following day. It is the intention of the Chair to ensure that as many questions as possible are asked and answered and that both questions and answers are short and to the point. The estimates committee's consideration of the estimates will be restricted to discussion of those items for which a vote of money is proposed in the consolidated account. Questions must be clearly related to a page number, item, program or amount in the current division. Members should give these details in preface to their question. If a division or service is the responsibility of more than one minister, a minister shall be examined only in relation to their portfolio responsibilities.

The minister may agree to provide supplementary information to the committee rather than asking that the question be put on notice for the next sitting week. I ask the minister to clearly indicate what supplementary information he agrees to provide and I will then allocate a reference number. If supplementary information is to be provided, I seek the minister's cooperation in ensuring that it is delivered to the principal clerk by Friday, 1 June 2018. I caution members that if a minister asks that a matter be put on notice, it is up to the member to lodge the question on notice through the online questions system.

I give the call to the member for Warren–Blackwood.

Mr D.T. REDMAN: I refer the minister to page 57 of budget paper No 2. Under “Spending Changes”, there is reference to a number of spending changes that reflect the Aboriginal policy shift from the Department of Communities and the Department of Planning, Lands and Heritage. Could the minister please enlighten us on the full structure and who is responsible for what? Something is now located in the Department of the Premier and Cabinet—it has come out of other agencies—and, of course, there is also the reform unit.

Mr B.S. WYATT: Is the member referring to the bottom of the page and the transfer of policy?

Mr D.T. REDMAN: Yes.

Mr B.S. WYATT: I will read something just to get some statistics on the record and then have a broader conversation. On 1 July 2017, formation of the Aboriginal policy unit within the DPC fell out of the machinery-of-government changes that created that policy unit. I have some numbers that the member may find of use. The combined transfer of \$1.3 million in 2017–18 from the Department of Communities, being \$322 000, and the Department of Planning, Lands and Heritage of just over \$1 million, represents a section 25 transfer of function from the former Department of Aboriginal Affairs to the Department of the Premier and Cabinet. As I think the member referred to, there was effectively also all the lands work, and the vast majority of FTE in the former department went to DOPLAH—the policy unit was created within DPC, and the land work, heritage work et cetera went to DOPLAH. The native title unit is still within Premier and Cabinet.

Mr D.T. REDMAN: Does the remote reform unit still sit with Housing as the lead agency?

Mr B.S. WYATT: Yes.

Mr D.T. REDMAN: I am sure that the minister has publicly stated in the past that he has concerns about what used to be the old Department of Aboriginal Affairs. Is there any intent to effectively abolish that and make it part of the broader agencies, as he just described?

Mr B.S. WYATT: Yes. Effectively, under the Aboriginal Affairs Planning Authority Act, the minister is the authority. The department was created to support the minister as the authority under the Aboriginal Affairs Planning Authority Act. The policy unit is there to support me as minister even though it is within DPC but obviously to provide more of a whole-of-government policy work. The DOPLAH staff, as the member is probably aware, really do that kind of transactional work around the Aboriginal Heritage Act and section 18s, and, more broadly, the Aboriginal Lands Trust work as well. The Native Title Unit, also in Premier and Cabinet, has its own work as well. There are three parts to it. I think it is a better structure. As the member pointed out, there is also the regional reform work, which Housing leads but that is obviously a big role for me.

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Mr D.T. REDMAN: I am assuming that the work that the Minister for Housing is doing under the regional services reform is a fair bit driven by this policy unit in terms of where investments are made and the nature of those strategic investments?

Mr B.S. WYATT: I will hand over to the deputy director general in a second but, yes, they are clearly very closely involved.

Ms M. Andrews: The intent is to build the policy unit to provide that sort of support to the line agencies in delivering on those major commitments and priorities of government. One of the objectives around the machinery-of-government change was to bring that policy function into the central agency—into DPC—to be in a better position to support the line agencies in the delivery of outcomes and to get better coordination across government. That is certainly the intention of forming the new policy unit.

Mr K.J.J. MICHEL: I refer to page 62 of budget paper No 2. Can the minister provide an update on the number of native title claims and determinations in Western Australia?

Mr B.S. WYATT: I thank the member for the question. I think I have made the comment in this place before that, by and large, native title is an issue that the governments of Queensland and WA spend a lot more time on. In Western Australia, we are now at the tipping point in that we have more determinations than applications. Currently, there are 79 native title applications in WA and 81 determinations have been made up to 16 May. During 2017–18, there were 15 determinations, 10 by consent and five litigated. Fifty-six of those 79 applications are in active Federal Court case management. We are effectively at a point that the more complicated native title applications are outstanding but the vast majority of those are in some form of process. I have had those conversations with the other native title ministers and with the former commonwealth Attorney-General around the status of native title. I think we are much more progressed around this space than almost all other states. Having said that, many other states have different tenures that occupy time as opposed to native title. New South Wales and the Northern Territory are classic examples.

Dr M.D. NAHAN: Could the minister give me some background on the state of play with the Yindjibarndi issue with FMG?

Mr B.S. WYATT: I can. That is at a fairly high level. The Wirlu-murra Yindjibarndi Aboriginal Corporation had success in an exclusive native title claim. There has been ongoing conflict between two different groups—the Wirlu-murra and Yindjibarndi. I have had conversations with all three groups, including Fortescue Metals Group. I am trying to understand how we can move forward. Bear in mind I am a state minister dealing with commonwealth legislation—it is a sort of funny place to be. There is now generally between the two Yindjibarndi groups—Wirlu-murra and Yindjibarndi—a desire to resolve some of those outstanding conflicts, and I think FMG as well. There were some sticking points that led to the split with the different Yindjibarndi groups. It seems that FMG has taken a different view on some of those, which is good. FMG has appealed the court's determination on some points of exclusive possession. That will go through the court process. I think this is now ripe for agreement—I hope. I am doing all I can to try to facilitate that. It seems that FMG, as is its right, will pursue a court process.

[2.10 pm]

Dr M.D. NAHAN: I refer to the Premier's section of the budget papers, specifically page 68 of budget paper No 2, which shows that about \$35 million is set aside for native title and other issues north of Broome for the James Price Point issue. Last year, a budget allocation of \$35 million was proposed or thought of but was not done. I want to get some indication about what that was actually for. Was it residual money? There is also an allocation of \$37 million in 2019–20 for the Browse liquefied natural gas precinct regional benefits package. A fund is, of course, attached to that. I cannot remember dealing with this at all, to be honest. An amount of \$33 million in the 2017–18 budget was supposed to be expended but has not been expended and has been carried forward. I cannot remember as Treasurer ever coming across this fund.

Mr B.S. WYATT: The sum of \$30 million includes the state's contribution of \$10 million to the economic development fund. The purpose of this fund includes increasing the number of members of the native title claim group that are involved in sustainable employment, self-employment and business, traineeships and apprenticeships, supervisory, technical, professional and management positions within all sectors of government and the economy, and to increase the number of businesses owned by members of the native title group. That \$30 million comprises \$10 million towards the economic development fund and \$20 million towards the Indigenous housing fund. The Leader of the Opposition is right—it looks as though payment for that has been rolled over into 2019–20.

Dr M.D. NAHAN: I just wanted to get some feel for it. It looks as though the government wanted to spend it in 2017–18 but it decided not to, for whatever reason, and it is being held in the fund until 2018–19. Is it still being

negotiated in some way or is it residual from the James Price Point discussion of Browse? Will it remain parked until the government does something with Browse?

Mr B.S. WYATT: That is it. The delay in the agreement is effectively why it has been rolled forward. It is a fallout of that.

Dr M.D. NAHAN: So it will remain parked until something significant happens at Browse?

Mr B.S. WYATT: Yes, until an agreement is finalised, I suspect.

Ms M. Andrews: Until the determination is finalised.

Mr B.S. WYATT: Sorry—until the determination is finalised. We are waiting on the finalisation of the determination. That is going to take a bit more time, so it is to be rolled forward.

Dr M.D. NAHAN: I have a general issue about this. There is a whole range of agreements between miners, LNG developers and Aboriginal groups about various types and places. If we added up all of them, it would be a substantial amount of money. From my trips through the Kimberley, an issue that kept coming up was that certain groups have potentially benefited and some have not. Some groups are quite wealthy, some groups have money parked aside for future use but have not got access to it, and some have nothing. In terms of allocating government resources, often those different equity positions are not adequately taken into consideration; in fact there is not too much information about who has what, when and where. Will something be done about this because I was told it is a huge issue?

Mr B.S. WYATT: Yes. This issue has been around since the Native Title Act. Effectively that was why the Indigenous Land Corporation was established. The commonwealth created that land fund to enable the purchase of land for Aboriginal people who either had had native title abolished for whatever reason or had moved off country et cetera. That was the intent of it. The commonwealth department recognised back then that there will be this fundamental issue of those who have native title rights, whatever they may be, on whose country there may be valuable deposits of whatever it may be. That is a fundamental issue and that is ongoing. There are even splits within those groups—the Yindjibarndis are a good example—that create those exact issues. I am not sure that I have a solution to it. I do not know whether the Leader of the Opposition has seen that the commonwealth has now released a discussion paper around some proposed amendments to the Native Title Act. They have been around a long time but were prompted by the debate around the amendments that fell out of the McGlade decision in this state with the south west settlement. There is now an opportunity to make some broader amendments to make the act work better for those who hold native title. However, that does not deal with the fundamental problem that people may have lost native title for reasons beyond their own. One matter that I would love to have some form of solution to relates to the Gibson Desert, where a petroleum lease, eons ago—there was never any activity as a result of the petroleum lease—extinguished the right to exclusive possession of native title. It is almost like a stand surrounded by exclusive possession, and right there is non-exclusive possession of native title. That is a standing issue for traditional owners but it highlights a problem that I do not have a solution for. The role of government is to ensure, in a broader service delivery sense, that we still provide those services. The Attorney General is doing some investigations under the Charities Act—I do not want to get the name wrong—into one or two charitable trusts to try to examine how money has been used and perhaps whether it has been used contrary to the purposes of the trust.

Mr D.T. REDMAN: Following on from the Leader of the Opposition's question about a number of Aboriginal corporations that get money from effectively the resource sector in the north, informal feedback I have received suggests that it is because of the downturn in the economy that those flow-through impacts are being felt. Is the minister getting any signals into his office about some stressors in respect to Aboriginal corporations and the employment base that sits within them, for example? I guess, by extension, the government is the supporter of last resort. Will it play a role in supporting what is going on?

Mr B.S. WYATT: Yes, I have come across a range of anecdotal examples. Some of the stressors are also seen in the media. Like almost any organisation, when an expense base comes off a revenue base during much better times, pressures emerge pretty quickly when revenues decline for whatever reason. I am not going to name them—we have all read about them in the media—but some have responded pretty well and reduced their cost base, and some have struggled to do that. Yes, I do see that all the time. Of course the state is always there as a service provider of last resort for those essential services. A lot of organisations have spent a lot of money in areas that traditionally were government space, such as housing, training or whatever. It might be scholarships—Aboriginal kids come to Perth to go to an expensive school and then the money that was supporting that has shrunk. I have come across a few terrible examples in which the money is no longer there, for whatever reason, to pay the school fees.

[2.20 pm]

Mr D.T. REDMAN: There is no acute government response to that, just normal service support?

Mr B.S. WYATT: Yes, normal service support. There are some things we can assist with and there are some we cannot.

Mr D.T. REDMAN: This is a separate question. I refer to page 62 and the second dot point under “Government Policy Management”, regarding strategic policy advice from this unit that sits within the Department of the Premier and Cabinet. I refer specifically to the royalties for regions-funded north west housing initiative of some \$95 million over four years. Can the minister advise us as to how that will be disbursed and whether it will be transitional housing with a focus on some of the bigger centres in the region, as distinct from remote communities? I am chasing the policy settings around how that is going to be deployed.

Mr B.S. WYATT: That is all being done in the Minister for Housing’s space.

Mr D.T. REDMAN: The Minister for Housing? Appropriate.

Mr B.S. WYATT: Yes. I apologise; he is the person who sets those priorities and parameters.

Mr D.T. REDMAN: I guess this question leads to my earlier point about having a strategic focus on where investments are made. This area has historically had some challenges in terms of left hand, right hand. The minister’s moves, I think, are the right moves, in centralising some thinking around that, and I guess this is one of those examples.

Mr B.S. WYATT: That is what we want the Aboriginal policy unit to be—exactly that. These sorts of funds, which are designed to have an Aboriginal focus, need to have involvement from our unit, particularly around priority settings. I suspect that will happen; it just does not seem to have happened yet.

Ms M. Andrews: Probably to reconfirm what the member is looking for, it reflects the early days of the unit being set up. One of the learnings for us through the recent Expenditure Review Committee cabinet process was looking at the decisions being made through that process and seeing opportunities there for the new policy unit to be engaged earlier on in the process, with agencies helping inform the priority settings around exactly the points the member is making.

Mr D.T. REDMAN: Does that involve engagement with any federal government funds? I know the National Partnership Agreement on Remote Indigenous Housing is coming to an end, but there are sometimes federal funds with ear tags that are challenging to Western Australian strategic positions. Is that engagement through this unit?

Mr B.S. WYATT: Yes. Does the deputy director general want to make some comments?

Ms M. Andrews: Yes, two units are already working very closely. Again, that is highlighting the opportunity but it is still early days. We have a different policy unit in my broader team that is focused on federal–state relations and looking to strengthen the approach we are taking to negotiations with the commonwealth government around all sorts of agreements. But in the space we are talking about here, the Aboriginal policy unit and the federal–state relations team are working very closely together around the strategy we are deploying in that space, looking to get better outcomes for Western Australia.

Dr M.D. NAHAN: I just seek a bit of background on the Noongar deal in the Perth area. I never followed that too closely. I assume there is still a flow of impacts on the budget in terms of expenditure going forward. Is that continuing? Are there any issues relating to that? When we left government negotiations were still ongoing to some extent, particularly with regard to access to land, types of land and input to jobs.

Mr B.S. WYATT: I will make a couple of comments and then I will ask Angela Elder, who is sitting behind me, to comment; she is managing this. Yes, the Leader of the Opposition will recall that annual payments started. Obviously, because of the delay, it has simply shifted. That has not changed; the timing has changed. There were delays as a result of some federal parliamentary requirements that fell out of the McGlade decision. That delayed things. It was then effectively re-registered with the National Native Title Tribunal. There were a range of objections and they are now being heard. The McGlade judgement was in February last year and created some implications. The objections that were re-lodged are now being dealt with by the Native Title Registrar. It is anticipated at this point that the settlement will commence, at the earliest, in early 2019, but that is very much subject to what the registrar finds. That is simply because there are legal proceedings on now. I will ask Angela to make some comments because there is also the possibility that even if we get through all of the objection process successfully, the reality is that there might still be a judicial review. I will ask Angela to make some comments.

Ms A. Elder: As the minister said, the registration process continues with the National Native Title Tribunal and we expect there to be a decision on that hopefully in July or August, but we also expect there to be a judicial review of that decision. There have been objections in the community so there is that possibility. That could probably take

six months, which is why the estimate of early 2019 is what we are working towards. As the minister said, that funding and the budget that was approved in 2012 keeps getting rolled over, year by year, until the commencement, so the funds are there. However, the land identification process that the Leader of the Opposition mentioned has already commenced and we have started to identify land that can be transferred, once the settlement commences. That final allocation can only occur once the settlement actually starts, and that will not be until 2019.

Mr B.S. WYATT: To add to that, this is something that has been around now for a while; the previous government did a lot of work on this. We are also continuing, as the previous government did, to try to get the commonwealth government involved in the settlement. In March 2015 the commonwealth government offered to contribute \$10.8 million, which was effectively three years' funding for the South West Aboriginal Land and Sea Council. The view of the former government and of this one is, to be frank, that that is not terribly sufficient, because it does not even bring the commonwealth government to the agreement as a party. That will be ongoing; I would like to think that, whether it is commonwealth land and in light of the fact that it is a 12-year time frame for payment from the state government, the commonwealth government could at least do a 12-year payment in respect of the South West Aboriginal Land and Sea Council, because it is ultimately funded by the commonwealth government. That is ongoing. I am hopeful, in light of the significance of this settlement, that the commonwealth can play a bigger role than it has thus far indicated it wants to play.

Dr M.D. NAHAN: This has been going on for a long time. Are the Noongar people unhappy with the length of time it is taking and asking for payments in lieu of settlement?

Mr B.S. WYATT: I caught up with the board of SWALSC last week. It has an almost entirely new board and it is, understandably, frustrated with it but it is still a very unified and strong board. I reiterated the support of the government and the Parliament for this settlement, which it was pleased to see. Out there, of course, there is not 100 per cent support; we will never get 100 per cent support, but my view is that the majority of the Noongar people want this resolved. Yes, there is general frustration that it has taken so long, but they understand why. The process is there. The fact that there are no time frames around these processes of objections et cetera highlights a problem with the Native Title Act, and this might be an opportunity to perhaps deal with some of that, now that the commonwealth government seems to be keen to proceed. George Brandis was keen; we had some good meetings last year. I think we have an opportunity now; Christian Porter is a former native title minister of this state, so hopefully he is keen to progress native title. It sometimes gets forgotten or becomes very difficult to amend at the commonwealth level, particularly with a problematic upper house, but hopefully we can, because I think there are some real opportunities to fix this so we no longer have what is at the moment a never-ending process that is frustrating for everybody and is very, very expensive.

The CHAIR: The member for Warren–Blackwood has just asked me for clarification, minister. We are on division 3; division 43 is around the Department of Planning, Lands and Heritage. There will be different advisers, but there is a question about whether the minister can flow from this division to division 41 so we can keep on the same track of thinking.

[2.30 pm]

Mr B.S. WYATT: I am happy to; it is just that if we get very specific, I will obviously need different people.

The CHAIR: You would bring in different advisers. We will put this appropriation.

Mr B.S. WYATT: I am not sure the advisers are here. I am told they are.

The CHAIR: We would put this appropriation and bring in the new advisers.

Mr B.S. WYATT: That makes sense.

Mr K.J.J. MICHEL: I refer to significant issues impacting the agency on page 58 of the *Budget Statements*. Can the minister advise what works the state government has done to advance discussion with the commonwealth government about the federal government contribution towards native title agreements in WA?

Mr B.S. WYATT: I thank the member for the question. This has been part of an ongoing process with the commonwealth government around Noongar, and I have now taken up the issue of an alternative settlement agreement for Geraldton with the commonwealth. That is proceeding. In March, I wrote to the Attorney-General, Christian Porter, and the Minister for Indigenous Affairs, Nigel Scullion, seeking the commonwealth position on this. I received a letter back from the Attorney-General indicating he would take the matter up with the federal Indigenous affairs minister. We are very keen to have the commonwealth involved. Something that is often lost is that we are dealing with commonwealth legislation, and the commonwealth needs to be involved in some—I would like to think all of them—alternative settlement processes. This is also playing out in respect of conversations we have tried to have with the commonwealth on compensation. The commonwealth does not want to have a broad policy position and will treat each matter on a case-by-case basis. I must admit that that has not been particularly

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clarifying, but that is the process we are going through and hopefully we will get a better outcome with Noongar, and then the second largest matter proceeding at the moment, which is Geraldton.

Mr D.T. REDMAN: For want of a better point of entry, I refer to policy advice to the minister on page 62 of the *Budget Statements*. Under the previous government the crown land and pastoral leases estates had a pathway towards freehold land tenure reform should there be identified opportunities, whether they be touristic, cultural or agricultural. There was a pathway to a section 79 lease through the Land Administration Act or freehold. There were different views within traditional owner groups about whether that was a good thing. Around Gogo Station, for example, it was very positive. There was positive engagement and there was support for a pathway to freehold. In other areas it has not been positive. I am interested in whether this still remains a policy position of the current government. It is an opportunity to bring some capital investment to those areas. Is it a policy setting and is it currently supported through the relevant minister?

Mr B.S. WYATT: The answer is yes, it is being supported by the Minister for Regional Development in particular. Suffice to say that the positions and responses have not changed, and depending on who and where it is, and the current nature of the tenure, there are different views.

Mr D.T. REDMAN: So it is case by case.

Mr B.S. WYATT: Yes, it is case by case.

Mr K.M. O'DONNELL: I refer to responsible ministers on page 592 of the *Budget Statements*. I just have a broad question to the Minister for Aboriginal Affairs. Aboriginal people have issues and various needs and they need to be continued to be met. Does the minister believe those needs have been met since Aboriginal Affairs has been placed in a super department? As an example, within the police department, if there is an officer in charge who is very traffic orientated, he will put all his resources that way and forget about other things such as community policing.

The CHAIR: Member for Kalgoorlie, I am sure that the minister will give you latitude, but you are supposed to refer to a line item.

Mr K.M. O'DONNELL: I am referring to the heading "Responsible Ministers" and lines 9 and 10 listed next to "Minister for Aboriginal Affairs". My apologies; I should have even gone further.

Mr D.T. REDMAN: It is page 592.

Ms A. SANDERSON: Is that a line item?

Mr K.M. O'DONNELL: Apologies.

Mr B.S. WYATT: I am happy to respond. That is ultimately what I have been trying to achieve with what we have created over a long time. I guess this goes back to the Aboriginal Affairs Planning Authority Act, which, to be fair, most people thought had gone well past its due date. Aboriginal people were frustrated with it as well, because it was not advocating their interests. In the view of lots of Aboriginal people it was mainly there to provide the Aboriginal Lands Trust service and support the policies of the government. To be frank, I found it an easy excuse for other agencies to refer Aboriginal issues to that agency, and it was never a service delivery agency. By bringing that policy unit into the Department of Planning, Lands and Heritage, and I get it is a big central agency, I am trying to get to a point at which government gets more use. There is a whole-of-government policy unit, but there are agencies such as police, health et cetera. These are citizens of Western Australia and if the government is responsible for the delivery of services, it should not think there is an Aboriginal agency that should be doing health services for Aboriginal people. That is the responsibility of the Department of Health, be it regional or metropolitan. This will take some time. We have had a bit of conversation about it and it is taking a bit of time, but I think it is the best outcome. On what I will call the transactional side of things there is the lands stuff. The land estate, the ALT estate and the heritage processes under the heritage act tend to be transactional. I think in government we know how to deal with them pretty well. Aboriginal representative bodies and prescribed bodies corporate and whoever know how to deal with them pretty well. That is something that just sort of happens and the agencies deal with it quite well. Yes, there are controversies along the way, but if we can amend the heritage act and get a better process there, it will be good. I think we will land a better outcome. Having said that, I still expect police to have particular people focused on Aboriginal people, whether that be through Aboriginal police officers, Aboriginal programs et cetera. But the policy unit is more about ensuring the subject of the conversation that we just had; that is, housing or another agency does not wander off and do something without coming to the coordinator and saying what is happening. I think we are starting to see some progress; for example, the response to the Roebourne issue was very much coordinated. Even though the Department of Communities and the minister responsible had the lead on that, the question was how a proper culture of response to the Roebourne issue was ensured. We have seen these things in towns all over the place before. The response has been clumsy and in another 15 years they have to deal with the same thing again. Hopefully, I have answered the question.

Extract from *Hansard*

[ASSEMBLY ESTIMATES COMMITTEE A — Wednesday, 23 May 2018]

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The CHAIR: Member for Kalgoorlie, the minister has been very charitable. You were supposed to refer to a line item. Firstly, what you referred to was not in the right service, because you took me to a heading that was another part of division 41. Secondly, it was not a line item. If you want to ask a further question, I caution you that some ministers may not be as charitable, so please do not assume that this is the natural course of how estimates operates. If you want to ask for a further question, I am happy to enable you to do that, but firstly, you were referring to the wrong division and secondly, what you referred to was not a line item.

Mr K.M. O'DONNELL: Apologies, Madam Chair. I thought we had combined the services. I thought it had gone.

The CHAIR: No, we have to change. That is okay, let us not enter into a debate. You do not have to debate the Chair. Do you have a further question?

Mr K.M. O'DONNELL: Negative.

The appropriation was recommended.

[2.40 pm]